



# The Senate of The State of Texas

SENATOR RODNEY ELLIS  
District 13

COMMITTEES:

RECEIVED  
Chair, Jurisprudence  
State Affairs  
Economic Development  
Redistricting  
General Investigating  
APR 07 1998

GOVERNMENTAL INQUIRY  
UNIT

April 2, 1998

The Honorable Dan Morales  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42713-98 RECEIVED  
I.D. # 40203  
APR 08 1998

Opinion Committee

Dear Attorney General Morales:

As a member of the Senate Economic Development Committee, I am asking for your opinion with respect to whether DeSoto Economic Development Corporation (DEDC), a 4A Sales Tax City, can participate in the funding of a proposed Dallas Star "Junior (Ice) Arena" (Arena) proposed to be built in the City of DeSoto. Specifically, can DEDC expend its funds to pay a portion of the financing costs of the proposed Arena. I have enclosed a DEDC brochure, newsletter and information concerning DEDC's involvement with the Arena for your review.

As I understand it, the Arena would be built and owned by a private, for-profit entity associated with the Dallas Stars Ice Hockey Team. The Arena would be operated as a commercial, for-profit recreation, sports and entertainment facility. DEDC would participate by expending DEDC funds (raised through a dedicated sales tax) to pay part of the debt service on the Arena. The owners apparently have represented that the Arena, as proposed, would provide employment, generate local sales tax revenue, and would attract visitors and other business activity to DeSoto.

DEDC is an economic development corporation existing under Article 5190.6, Tex. Rev. Civ. Stat. Ann. (Supp. 1998). Section 10 of the statute sets out the definition of "project", Section 21 permits economic development corporations to issue bonds "to finance the cost of projects", and Section 23 sets out the powers of economic development corporations, which generally include the powers of non-profit corporations as well as specific powers relating to acquiring, leasing and financing "projects."

While the definition of "project" is fairly broad, the common denominator in the definition is a requirement that the "facilities" be primarily of an industrial, transportation, utility or pollution control nature. Even, if an Arena could be built and operated as a business, it probably would not fit within any of the categories in the definition of "project."

The May 1996 Austin Court of Appeals opinion in *Gaut v. Amarillo Economic Development Corp.*, 921 S.W.2d 884 (Tex. App.-- Austin 1996, no writ) may be read to substantially expand the permissible range of activity for Article 5190.6 economic development corporations.

Lyric Centre  
440 Louisiana, Suite 575  
Houston, Texas 77002  
(713) 236-0306  
FAX: (713) 236-0604

P.O. Box 12068  
Austin, Texas 78711  
(512) 463-0113  
FAX: (512) 463-0006 • TDD 1-800-735-2989  
E-Mail: rodney.ellis@senate.state.tx.us

2440 Texas Parkway, Suite 260  
Missouri City, Texas 77489  
(713) 261-2360

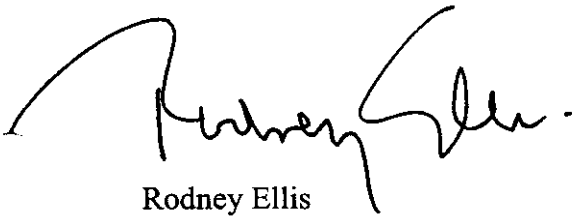
Attorney General Morales  
April 2, 1998  
Page 2

The challenged expenditure in the *Gaut* case was an economic development corporation's direct subsidy to American Airlines to continue flights to Amarillo. The *Gaut* opinion, which recently has been relied on by the Attorney General in construing Article 5190.6, holds that an economic development corporation may finance certain facilities or activities which do not qualify as "projects" if the expenditure otherwise furthers the purposes of the statute. Among those purposes cited by the court are "enhancement to the (city's) economy" and economic benefits to the residents of the (region)." The opinion also discusses "employment opportunities." It relies on a provision of Section 23 that refers to "all powers necessary or appropriate to effect any or all times to the control of the governing body of the unit under whose auspices the corporation was created." *Id.* at 887.

If I can provide you with further information regarding this matter, please do not hesitate to contact me.

As time is of the essence, I would greatly appreciate an expedited response on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Ellis", with a long horizontal flourish extending to the right.

Rodney Ellis

RE/mr

cc: Senator Royce West  
Dean Dauley, President/CEO, DeSoto Economic Development Corporation

Enclosures